

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL D. MILAM,

Petitioner,

v.

DAN WHITE,

Respondent.

Case No. C14-5655 RBL-KLS

**ORDER ADDING ADDITIONAL
HABEAS CLAIMS AND
GRANTING EXTENSION TO FILE
RESPONSE**

Petitioner Michael D. Milam seeks 28 U.S.C. § 2254 habeas relief from his 2012 Pierce County conviction of multiple counts of second-degree identity theft, trafficking in stolen property in the second and first degree and second-degree possession stolen property. Dkt. 6; Dkt. 15, Exhibit 1. On November 5, 2014, Mr. Milam filed a motion for statement of relief in which he presents two additional habeas claims. Dkt. 13. At the time he filed his habeas petition herein, Mr. Milam's personal restraint petition remained pending in the state courts (Supreme Court No. 90767-6; Personal Restraint Petition of Michael Milam Court of Appeals No. 46283-4-II).

Respondent contends that the Court should consider Mr. Milam's motion for relief (Dkt. 13) as presenting additional habeas corpus claims and that it should dismiss the petition without

1 prejudice to refilling after Mr. Milam's state court proceedings are concluded and the state court
2 record is available to allow Respondent to properly conduct an exhaustion analysis on all of Mr.
3 Milam's claims on the merits. Dkt. 14. On December 12, 2014, the Court received notice that
4 on November 26, 2014, Mr. Milam voluntarily dismissed his case in the state supreme court.
5 Dkt. 20-1.

6 Based on Mr. Milam's dismissal of his state court case, the Court finds that dismissal of
7 this case is not necessary. However, in light of the additional claims raised by Mr. Milam and
8 because the state court record was not previously available to Respondent, an extension of time
9 is appropriate.

10 Accordingly, it is **ORDERED**:

11 (1) Petitioner's motion for statement of relief (Dkt. 13) shall be considered by the
12 Court as presenting two additional habeas claims herein;

13 (2) Respondent is granted an extension of forty-five (45) days from the date of this
14 Order to obtain the state record and file its answer on the merits of the habeas petition (including
15 the additional claims raised in Dkt. 13). The Clerk shall **strike** the present noting date of
16 December 12, 2014.

17 (3) Respondent's answer will be treated in accordance with Local Rule CR 7.
18 Accordingly, upon receipt of the answer the Clerk will note the matter for consideration on the
19 fourth Friday after the answer is filed, Petitioner may file and serve a response not later than on
20 the Monday immediately preceding the Friday appointed for consideration of the matter, and
21 Respondent may file and serve a reply brief not later than on the Thursday immediately
22 preceding the Friday designated for consideration of the matter.
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1 (4) Petitioner's motions (Dkts. 17, 18, and 19) are **DENIED as moot**.

2 (5) The Clerk shall send a copy of this Order to Petitioner and counsel for
3 Respondent.

4 DATED this 12th day of January, 2015.

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7 Karen L. Strombom
United States Magistrate Judge
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